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BRADLEY MacDONALD

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

MEDIFAST, INC., a Delaware Corporation, )  
and BRADLEY MacDONALD, an individual, )

Plaintiffs, )

v. )

BARRY MINKOW, FRAUD DISCOVERY )  
INSTITUTE, INC.; ROBERT L. )  
FITZPATRICK; TRACY COENEN; )  
SEQUENCE, INC.; WILLIAM LOBDELL; )  
IBUSINESS REPORTING; ZEEYOURSELF, )

Defendants. )

CASE NO. 10-CV-0382-CAB (MDD)

**JOINT MOTION FOR  
CONTINUANCE OF HEARING ON  
DEFENDANTS' MOTIONS FOR  
ATTORNEYS' FEES**

Date: November 14, 2014  
Time: 3:00 pm  
Honorable Cathy Ann Bencivengo  
Courtroom: 4C

**I. INTRODUCTION**

Plaintiffs, Medifast, Inc., and Shirley MacDonald ("Medifast") and Defendants, Tracey Coenen ("Coenen"), Barry Minkow, Fraud Discovery Institute, William Lobdell and iBusiness Reporting (collectively "Minkow") and Robert L. Fitzpatrick respectfully bring this joint motion to continue the following hearings currently scheduled for November 14, 2014 (the "motions"):

1) Coenen's Motion for an award of attorney's fees and costs (Dkt. 216);

2) Minkow and Lobdell’s Motion for Amended Judgment (Dkt. 223);

3) Minkow’s Motion for an award of attorney’s fees and costs incurred in District Court and Ninth Circuit Proceedings, Lobdell’s Motion for an award of attorney’s fees and costs incurred in District Court proceedings, and FitzPatrick’s Motion for an award of attorney’s fees incurred in Ninth Circuit Proceedings; (Dkt. 224); and

4) FitzPatrick’s Motion for an award of attorney’s fees and costs incurred in District Court proceedings (Dkt. No. 225).

This case has been on appeal before the Ninth Circuit since April 26, 2011. The Ninth Circuit entered its Memorandum decision on June 4, 2014, and an Amended Memorandum on July 14, 2014. (Dkt. 215.) The court filed its Amended Mandate on July 25, 2014, stating that the judgment took effect that date. The Mandate was spread before this Court on September 26, 2014 and the parties have agreed to a briefing schedule for the issues that remain, for January and February 2015.

At this time, the parties are in the midst of settlement discussions, which if fruitful, would avoid the need for the Court to decide the motions now pending before it. Additionally, there is a settlement conference scheduled before Magistrate Judge Mitchell D. Dembin on October 28, 2014. In order for Medifast to avoid the costs of preparing opposition papers to the motions, which are currently due on October 31, the parties have agreed to a continuance of said motions until December 5, 2014. This continuance will provide the parties with more time to reach a global settlement.

### III. ARGUMENT

Local Rule 7.1(g)(2) states: “Any request for continuance of a noticed matter must be made as soon as possible to the judge to whom the matter is assigned. Prior to seeking such continuance, the party seeking the continuance must contact all opposing parties or their counsel to determine whether they would agree to such continuance.”

An order was entered on September 29, 2014, directing the parties to contact the chambers of Magistrate Judge Mitchell D. Dembin within one week to schedule a settlement conference. The settlement conference was ordered to be held as expeditiously as possible. The parties immediately

1 conferred with Judge Dembin's chambers and amongst themselves and on October 2, agreed upon  
 2 October 28, 2014 as the date for the settlement conference.

3 Medifast's opposition papers to the motions are currently due by October 31, 2014. In order  
 4 to avoid the cost of having to prepare those papers before the settlement conference, the parties have  
 5 agreed to a three-week continuance of the hearing on the motions. A three-week delay in the hearing  
 6 will not prejudice any of the parties as this case was just recently remanded to the District Court  
 7 from the Ninth Circuit. There is currently nothing pending before the Court except for these  
 8 motions, which will not be affected by a change in the hearing schedule.

#### 9 **IV. CONCLUSION**

10 For the foregoing reasons, the parties respectfully request this Court to grant their joint  
 11 motion to continue the Hearing on (1) Coenen's Motion for an award of attorney's fees and costs;  
 12 (2) Minkow and Lobdell's Motion for Amended Judgment; (3) Minkow's Motion for an award of  
 13 attorney's fees and costs incurred in District Court and Ninth Circuit Proceedings, Lobdell's Motion  
 14 for an award of attorney's fees and costs incurred in District Court proceedings, and FitzPatrick's  
 15 Motion for an award of attorney's fees incurred in Ninth Circuit Proceedings; and (4) FitzPatrick's  
 16 Motion for an award of attorney's fees and costs incurred in District Court proceedings from  
 17 November 14, 2014 to December 5, 2014, at 1:30 p.m.

18 Dated: October 3, 2014

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24 Dated: October 3, 2014

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